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ALEXANDER L. STEVAS,
CLERK

NO. 80-1966

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

FREDDIE GOLD and Wife, GOLDIE GOLD,

Petitioners,

v.

NATIONAL SAVINGS BANK
OF THE CITY OF ALBANY,

Respondent.

SUPPLEMENTAL APPENDIX

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IN THE

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF TENNESSEE

WESTERN DIVISION

FREDDIE GOLD and Wife, GOLDIE GOLD,

Plaintiffs,

v.

NATIONAL SAVINGS BANK OF THE CITY OF ALBANY,

Defendant.

NO. C-74-640

VERDICT

(Filed December 14, 1977)

We, the jury, assess compensatory damages in favor of the plaintiffs in the amount of $150,000.00.

/s/ THELMA B. PERKINS
Foreperson

We, the jury, assess punitive damages in favor of the plaintiffs in the amount of $50,000.00.

/s/ THELMA B. PERKINS
Foreperson

December 14, 1977
Date

IN THE

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FREDDIE GOLD and Wife, GOLDIE GOLD,

Plaintiffs,

v.

NATIONAL SAVINGS BANK OF THE CITY OF ALBANY,

Defendant.

NO. C-74-640

JUDGMENT

(Filed December 15, 1977)

This action came on for trial before the Court and a jury, Honorable Robert M. McRae, Jr., United States District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict, in favor of Plaintiffs.

It is Ordered and Adjudged compensatory damages in amount of One Hundred & Fifty Thousand Dollars ($150,000.00) be assessed in favor of the Plaintiffs and punitive damages be assessed in favor of the Plaintiffs

in the amount of Fifty Thousand Dollars ($50,000.00).

Approved. /s/ ROBERT M. McRAE, JR.
United States District Judge

Dated at Memphis, Tennessee, this 15th day of December, 1977.

/s/ J. FRANKLIN REID
Clerk of Court

IN THE

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF TENNESSEE

WESTERN DIVISION

FREDDIE GOLD and Wife, GOLDIE GOLD,

Plaintiffs,

v.

NATIONAL SAVINGS BANK OF THE CITY OF ALBANY,

Defendant.

NO. C-74-640

ORDER ON MOTION FOR A JUDGMENT NOTWITHSTANDING THE VERDICT OR IN THE ALTERNATIVE MOTION FOR NEW TRIAL

(Filed July 13, 1978)

In this cause the defendant has filed a Motion for a Judgment Notwithstanding the Verdict or in the Alternative a Motion for a New Trial. Memoranda have been filed by both parties and a hearing was conducted. This is the ruling on the motions.

The case was based upon the breach of a contract whereby the defendant bank was to lend to the plaintiffs $300,000 on certain real estate in Memphis, Tennessee, upon which the plaintiff Freddie Gold had

caused to be constructed certain apartments. Because the contract between the parties contained a provision that a representative of the bank might determine if the apartments were constructed in a good and workmanlike manner and in accordance with the plans and specifications, this Court determined that the case of *Railroad* v. *Central Lumber and Manufacturing Co.*, 95 Tenn. 538, 32 S.W. 635 (1895) was the controlling authority applicable to the facts of this case. That case required the plaintiffs to show conduct which was fraudulent or so obviously unjust as to imply bad faith or gross neglect.

The Court submitted the following Special Interrogatory to the jury:

> Was the determination by Ronald R. Rucinski, Architect, that the apartment building and other improvements were not constructed in accordance with the plans and specifications and were not constructed in a good and workmanlike manner, fraudulent or so obviously unjust as to imply bad faith or gross neglect?
>
> _____ Yes _____ No

The jury answered "yes." The Court then submitted other interrogatories with respect to damages, and the jury returned a verdict of $150,000 for compensatory damages and $50,000 for punitive damages.

The Motion for a Judgment Notwithstanding the Verdict is based upon three grounds. One is based upon the insufficiency of the pleadings and the other two are based upon the insufficiency of the evidence on the respective issues of liability and damages in favor of the plaintiffs. The Court overrules that motion upon all grounds.

The Motion for a New Trial is based upon nine numbered grounds.

Number one goes to the weight of the evidence, and it is overruled.

Numbers two, three, four, and nine are based upon contentions that portions of the instructions given to the jury by this Court were erroneous. Ground numbered eight is based upon the failure of the Court to give five instructions as requested by the defendant. All grounds based upon the instructions given and not given are overruled.

Ground number five is based upon the contention that the compensatory damages were so excessive as to indicate passion, prejudice and caprice on the part of the jury so as to shock the conscience of the Court. The Court agrees with this contention to the extent that the Court suggests a remittitur to a judgment for compensatory damages of $100,000.00. In this regard the Court notes that the claims for damages prior to the trial were multiple and confusing. Some of those were withdrawn, and the proof offered on the question of damages were also confusing. This Court believes that maximum damages allowable would be the value of the apartments as of the date of the breach and the amount of the loan. This amount, based upon the credible proof, would be $100,000.00. In this regard it should be noted that there was proof that loans were not available from other sources at the time of the alleged breach, therefore the difference between the terms of the loan commitment of the defendant and the extra costs of obtaining another loan was not available as a means of calculating and proving damages.

Grounds six and seven are based upon the respective contentions that there was insufficient evidence to sup-

port an award of punitive damages and alternatively, that the award of $50,000 was so excessive that it indicates passion, prejudice and caprice on the part of the jury.

Based upon the issues and proof in this case, the Court also suggests a remittitur of the entire amount awarded by the jury as punitive damages.

The Court is not unmindful that it instructed the jury that it could award punitive damages if the conduct of the representative of the defendant was malicious and wilful. This was based upon the Tennessee law which recognizes that punitive damages may be awarded in cases involving fraud, maliciousness or gross neglect. However, it must be noted that, in the instant case, the plaintiff was required to prove fraud, bad faith or gross neglect to establish liability for any consequential compensatory damages. Furthermore, the method approved for calculating compensatory damages for breach of a loan commitment was maximal. Therefore, upon the total circumstances this Court concludes that the entire award of $50,000 punitive damages should be eliminated from the judgment.

In summary, the Court overrules the motions of the defendant on all grounds except on the Motion for New Trial the Court suggests a remittitur so that the final judgment shall be $100,000 for compensatory damages, and no punitive damages.

IT IS SO ORDERED, and the Clerk is directed to enter a judgment accordingly.

ENTER: This 13th day of July, 1978.

/s/ ROBERT M. McRAE, JR., Judge
United States District Court

IN THE

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FREDDIE GOLD and Wife, GOLDIE GOLD,

Plaintiffs,

v.

NATIONAL SAVINGS BANK OF THE CITY OF ALBANY,

Defendant.

NO. C-74-640

AMENDED JUDGMENT

(Filed July 14, 1978)

In this cause, a trial jury awarded plaintiffs $150,000.00 compensatory and $50,000.00 punitive damages and a judgment to that effect was entered by the Court on December 15, 1977. Subsequently, defendant filed a motion for Judgment Notwithstanding the Verdict or for New Trial. On July 13, 1978, the Court entered an order on defendant's motion. In compliance with that order, the original judgment entered on December 15, 1978, is amended as follows.

A remittitur is suggested so that judgment will be $100,000 for compensatory damages, and no punitive

damages awarded. If the Court's suggestion of remittitur is accepted within thirty days from the entry of this amended judgment, all other relief prayed for in defendant's motion is denied. Otherwise, defendant will be granted a new trial.

Approved: /s/ ROBERT M. McRAE, JR.
U. S. District Judge

J. FRANKLIN REID
Clerk

IN THE

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF TENNESSEE

WESTERN DIVISION

FREDDIE GOLD and Wife, GOLDIE GOLD,

Plaintiffs,

v.

NATIONAL SAVINGS BANK OF THE CITY OF ALBANY,

Defendant.

NO. C-74-640

ORDER ON APPLICATION FOR AMENDED JUDGMENT

(Filed Aug. 22, 1978)

In this cause the Court on July 13, 1978, entered an Order on Motion for a Judgment Notwithstanding the Verdict or in the Alternative Motion for New Trial, which provided as follows:

> In summary, the Court overrules the motions of defendant on all grounds except on the Motion for New Trial the Court suggests a remittitur so that the final judgment shall be $100,000 for compensatory damages and no punitive damages.

Pursuant to that Order the Clerk caused an Amended

Judgment to be entered on July 14, 1978. That Amended Judgment provided in part as follows:

> If the Court's suggestion of remittitur is accepted within thirty days from the entry of this Amended Judgment, all other relief prayed for in defendant's motion is denied. Otherwise, defendant will be granted a new trial.

On August 8, 1978, there was filed in the cause Plaintiffs' Reply to the Judgment as Amended in This Cause, wherein it was indicated that the plaintiffs desired to accept the remittitur of $50,000 so that a final judgment on the issue of compensatory damages would be $100,000. However, with regard to the ruling on punitive damages, the plaintiffs contend that the Court eliminated the right to punitive damages as a matter of law, and therefore the Court should not have called its ruling a remittitur of punitive damages. Counsel for the plaintiffs submitted a form of amended judgment for the Court's approval designed to support the plaintiffs' position.

Counsel for the defendant submitted a different form of order designed to amend the judgment consistent with the position taken by the defendant. Upon the authority of *Donovan* v. *Penn Shipping Company, Inc.* 429 U.S. 648 (1977), the defendant contends that the plaintiffs must accept the entire remittitur of compensatory and punitive damages or a new trial shall be granted.

The Court conducted a hearing where the lawyers were allowed to argue the respective contentions of the parties. This Order hereby rules upon these post-verdict issues.

Upon further consideration this Court is of the

opinion that the ruling wherein all punitive damages were disallowed was erroneously called a remittitur by the Court. The Court is of the opinion that the punitive damages are not allowable as a matter of law under the facts of this case. The Court is of the opinion that it should not submit any punitive damage question to the jury if the case is to be retried.

The Court hereby concludes that a judgment notwithstanding the verdict should be granted in favor of the defendant on the issue of punitive damages.

IT IS THEREFORE ORDERED that the former ruling and judgment of this Court entered on July 13th and 14th, 1976, respectively, is hereby corrected in that a remittitur of $50,000 is granted upon the award of the jury of compensatory damages, and a judgment notwithstanding a verdict is granted in favor of the defendant upon the issues pertaining to punitive damages.

The plaintiffs having indicated within the time allowed that they would accept the remittitur of $50,000 of the $150,000 of compensatory damages awarded by the jury, the Clerk of this Court is hereby directed to enter a Final Corrected Judgment in favor of the plaintiffs in the amount of $100,000.

ENTER: This 22nd day of August, 1978.

/s/ ROBERT M. McRAE, JR.
Judge, United States Distict Court

IN THE

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF TENNESSEE

WESTERN DIVISION

FREDDIE GOLD and Wife, GOLDIE GOLD,

Plaintiffs,

v.

NATIONAL SAVINGS BANK OF THE CITY OF ALBANY,

Defendant.

NO. C-74-640

FINAL CORRECTED JUDGMENT

(Filed August 22, 1978)

In compliance with Order On Application for Amended Judgment entered on August 22, 1978, the Court concludes that a judgment notwithstanding the verdict should be granted in favor of the defendant on the issue of punitive damages.

It Is Therefore ORDERED that the former ruling and judgment of this Court entered on July 13th and 14th, 1978, respectively, is hereby corrected in that a remittitur of $50,000.00 is granted upon the award of the jury of compensatory damages, and a judgment notwithstanding a verdict is granted in favor of the

defendant upon the issues pertaining to punitive damages.

The plaintiffs having indicated within the time allowed that they would accept the remittitur of $50,000.00 of the $150,000.00 of compensatory damages awarded by the jury, a Final Corrected Judgment in favor of the plaintiffs in the amount of $100,000.00 is hereby entered.

APPROVED: /s/ ROBERT M. McRAE, JR.
United States District Judge

Dated at Memphis, Tennessee, this 22nd day of August, 1978.

/s/ J. FRANKLIN REID
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

No. 79-1039

No. 79-1040

FREDDIE GOLD and wife,
GOLDIE GOLD,

Plaintiffs-Appellees,
Cross-Appellants,

v.

NATIONAL SAVINGS BANK
OF THE CITY OF ALBANY,

Defendant-Appellant,
Cross-Appellee.

Before: EDWARDS, Chief Judge; KEITH and BROWN, Circuit Judges.

JUDGMENT

(Filed February 13, 1981)

APPEAL from the United States District Court for the Western District of Tennessee.

THIS CAUSE came on to be heard on the record from the United States District Court for the Western District of Tennesse and was argued by counsel.

ON CONSIDERATION WHEREOF. It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed as to the granting n.o.v. on the question of punitive damages, reversed as to the denial n.o.v. on the question of compensatory damages.

Each party to bear own costs on appeal.

ENTERED BY ORDER OF THE COURT

/s/ JOHN HEHMAN
Clerk

A True Copy.

Attest: /s/ AUDREY CROCKETT
Deputy Clerk

Issued as Mandate: March 10, 1981

CERTIFICATE OF SERVICE

I, Charles G. Black, hereby certify that I have served three copies of the foregoing Petition upon Respondent herein, by hand-delivering same to its attorneys of record, MARTIN, TATE, MORROW & MARSTON, P. C., 705 Union Planters National Bank Building, 67 Madison Avenue, Memphis, Tennessee 38103, on this 16 day of June, 1981.

Charles G. Black